(44)

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No. 4536 of 2007

R.P. Sharma

Versus

State of Chhattisgarh and others

&

Writ Petition (S) No. 4061 of 2007

Ashish Washnik

Versus

State of Chhattisgarh and others

ORDER

Post for : 26/11/2007

Sd/-
Sunil Kumar Sinha
Judge

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No. 4536 of 2007

PETITIONER R.P. Sharma, Aged about 45 years, S/o. Shri G.P. Sharma, Sub Inspector posted at Police Station Kawardha, District Kawardha, R/o. Police Line, Kawardha, District Kawardha (C.G.)

Versus

RESPONDENTS

1. State of Chhattisgarh, Through the Secretary, Department of Home, D.K.S. Bhawan, Mantralaya, Raipur.
2. The Director General of Police, Police Headquarter Raipur (C.G.)
3. The Inspector General of Police, Bilaspur (C.G.)

&

Writ Petition (S) No. 4061 of 2007

PETITIONER Ashish Washnik, Aged about 33 years, S/o. J.L. Washnik, Presently posted at Ratanpur, Police Station as Sub-Inspector, District Bilaspur (C.G.)

Versus

RESPONDENTS

1. State of Chhattisgarh, Through the Secretary, Department of Home, D.K.S. Bhawan, Mantralaya, Raipur.
2. The Director General of Police, Police Headquarter Raipur (C.G.)
3. The Inspector General of Police, Bilaspur (C.G.)

Writ Petitions under Article 226 of the Constitution of India

---

Appearance:

Shri Anand Kumar Tiwari, counsel for the petitioners in both the Writ Petitions.

Shri Pradeep Singh, Panel Lawyer for the State/respondents in both the Writ Petitions.

45

ORDER
(26.11.2007)

Sunil Kumar Sinha, J.

(1) These two petitioners, being the Sub-Inspectors, were posted at P.S. Ratanpur, District Bilaspur (C.G.). Petitioner-R.P. Sharma received information on 17.3.2007 that accused Santram @ Buchwa Gond has kept *Ganja* in his house. After preparing a *Panchnama* (Ex.-P/1) and making necessary entry in *Rojnamchasana* No. 694 (Ex.-P/16), he gave information to his higher officers (Ex.-P/17) and left for the scene of occurrence. He gave notice to the accused and after getting consent for search, made search of his house. Ultimately, *Ganja* in quantity of 4 Kg and 200 gms was found in kitchen of the house. A *Panchnama* (Ex.-P/7) was prepared and after the formalities of weighing etc., it was taken into police custody. The *Ganja* was sent to FSL for examination, from where a positive report (Ex.-P/21) was received.

(2) After completion of usual investigation, the charge-sheet was filed. The trial was conducted before the Court of Special Judge, where the petitioner- R.P. Shama was examined as PW-5. Petitioner- Ashish Washnik was also examined as PW-4. R.P. Sharma (PW-5) gave evidence about the documents pertaining to receiving of information, search made by the police party, weighing of the contraband, sending the contraband to FSL and receiving the report etc. Whereas, Ashish Washnik (PW-4) gave evidence that he had also gone with raid party and had returned back along with them. Other prosecution witnesses were also examined. Since *Panch* witness namely Ballu @ Balram Yadav (PW-1) has not supported the prosecution case and he happened to be the nephew of the accused, therefore, the Court did not rely on his evidence and ultimately, in absence of corroboration of evidence of petitioner R.P. Sharma (PW-5), acquitted the accused from the charges under Section 20 (B) (2) (b) of the N.D.P.S. Act vide judgment dated 27th June, 2007.

(3) While recording the judgment of acquittal, the Special Judge made observations that though petitioner-Ashish Washnik was through out present and he was holding the post of S.H.O., he did not conduct the inquiry, which was in violation of Para- 579 of the Police Regulation and he allowed the inquiry to be conducted by his colleague, petitioner R.P. Sharma, who was also a Sub-Inspector. The Court observed that being senior person, he should have conducted the inquiry. The Court further observed that during the inquiry, seizure memo of contraband was not prepared. Therefore, the Court passed the following remarks vide Para-13:

> "..... उक्त दोनों अधिकारियों का कार्य व आचरण संदेहजनक प्रतीत होता है, कर्तव्य के प्रति घोर लापरवाही भी है जो विभागीय जांच से ही स्थिति स्पष्ट हो सकती है, अभियुक्त के दोषमुक्ति के लिए भी दोनों अधिकारी दोषी है । अतः निर्णय की प्रतिलिपि पुलिस महानिदेशक पुलिस मुख्यालय रायपुर एवं पुलिस महानिरीक्षक बिलासपुर को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित किया जावे ।..... "

(4) It is against these remarks, the petitioners have filed these Writ Petitions for their expunction.

(5) Learned counsel for the petitioners agued that the adverse remarks are based on no material on record. He also argued that they were totally unwarranted and were passed behind the back of the petitioners as they were not given opportunity of being heard before passing such remarks.

(6) I have heard Mr. Anand Kumar Tiwari, learned counsel for the petitioners and Mr. Pradeep Singh, learned Panel Lawyer for the State.

(7) For exercising the jurisdiction to expunge the remarks, it is to be kept in mind that the power can not be exercised to expunge the integral part of the judgment i.e. the verdict and reasons therefor. Before exercising such power a difference has to be

(46)

determined between the remarks coming forward ostensibly as a part of judgment and that being in reality its integral parts. The Court is to see that the expunction is not going to alter the judgment on merits or in substance and the objectionable portion ought not to have been there in the judgment. It must be fully justified that the passage complained of is wholly irrelevant and unjustifiable and the expunction will not affect the judgment or the reason or the order. The power is to be exercised in limited manner with great caution and circumspection keeping in mind the principles, finality and inviolability of the judgment & that all to secure the ends of justice.

(8) In the matter of ***Manish Dixit and others –Vs- State of Rajasthan, (2001 CRI.L.J. 133 [Supreme Court])***, the Apex Court observed vide Para-43 of the judgment as follows:

> **"43.** Even those apart, this Court has repeatedly cautioned that before any castigating remarks are made by the Court against any person, particularly when such remarks could ensue serious consequences on the future career of the person concerned he should have been given an opportunity of being heard in the matter in respect of the proposed remarks or strictures. Such an opportunity is the basic requirement, for, otherwise the offending remarks would be in violation of the principles of natural justice. In this case such an opportunity was not given to PW 30 (Devendra Kumar Sharma). ***(The State of Uttar Pradesh –Vs- Mohammad Naim, AIR 1964 SC 703; CH. Jage Ram, Inspector of Police and another –Vs- Hans Raj Midha, (1972) 1 SCC 181; R.K. Lakshmanan –Vs- A.K. Srinivasan and another, (1975) 2 SCC 466; Niranjan Patnaik –Vs- Sashibhusan Kar and another, AIR 1986 SC 819 & State of Karnataka – Vs- Registrar General, High Court of Karnataka, AIR 2000 SC 2626).***

(9) In ***State of Bihar –Vs- Lal Krishna Advani and others, (2003) 8 SCC 361***, it was observed by the Apex Court that strictures cannot be passed against an individual without making him a party and without giving an opportunity to be heard since the right to reputation is an individual's fundamental right. The reference of *Advani's* case is also in the judgment of ***State of Maharashtra –Vs- Public Concern for Governance Trust and others with Vinay Mohan Lal –Vs- State of Maharashtra and others (Common judgment in both the cases, [(2007) 3 Supreme Court Cases 587]***, in which also the Apex Court again opined that when an authority takes a decision which may have civil consequences and affects the rights of a person, the principles of natural justice would at once come into play.

(10) If we apply these principles in the present case, it would appear that firstly, the observation on the ground that no seizure memo was prepared is unjustified. It comes in Para No. 8 of the impugned judgment that when the police force reached to the house of the accused, they gave him notice under Section 50 of the N.D.P.S. Act and thereafter his personal search was made and nothing was found in the said search. A memo (Ex.-P/6) was prepared. But when the house of the accused was searched, *Ganja* in quanitity of 4 Kg and 200 gms was found in the Kitchen and a seizure memo was prepared vide Ex.-P/7, thereafter other formalities were completed. Therefore, it is clear that the seizure of contraband was prepared and the observations pertaining to it is unfounded.

(11) So far as not conducting inquiry by Ashish Washnik (PW-4) under Para-579 of the Police Regulation is concerned, at the most, it can be an irregularity but on this only, the observations made by the learned Special Judge were not justified.

(12) If the prosecution ends into acquittal for the reason of not supporting the case by prosecution witnesses,other than the police officers , that itself does not lead to suspicion against the investigation and the police officers involved in the case. If the

(47)

investigation appears to be true, objective, logical, chronological and fruitful, leaving no lacuna from their side, no blame can be made to the police officers, if such investigation is not supported by the other witnesses in the Court.

(13) Moreover, these two witnesses were not given an opportunity of hearing regarding the proposed remarks or strictures to be passed against them. Certainly, if such remarks could ensure serious consequences on the future career of the person concerned, they should have been given an opportunity of being heard in the matter in respect of the proposed remarks or strictures. Such an opportunity is the basic requirement otherwise the offending remarks would be in violation of principles of natural justice. In the present case, admittedly, no opportunity was given to the petitioners to say anything against the circumstances on which the remarks were passed or against the proposed remarks to be passed against them.

(14) For the foregoing reasons, I hold that the observations/remarks made by the Special Judge against the petitioners behind their back vide Para-13 of the impugned judgment were totally unwarranted and they require expunction.

(15) The above remarks against both the petitioners contained in Para-13 of the impugned judgment are expunged. They shall not be read or given effect to against the petitioners. The petitions are allowed to the extent indicated above.

(16) There shall be no orders as to costs.

Sd/-
Sunil Kumar Sinha
Judge

vatti